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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,441	01/04/2002	Naoaki Yamaguchi	740756-2419	4492

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EXAMINER
ALANKO, ANITA KAREN

ART UNIT	PAPER NUMBER
1765	7

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/035,441	YAMAGUCHI ET AL.	
	Examiner	Art Unit	
	Anita K Alanko	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *amdt "a" 5/23/03* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. *08/451,648* .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5- 7, 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Imahashi et al (US 5,294,518).

Imahashi discloses a method comprising:

preparing a semiconductor film 2 (amorphous silicon) over a substrate 1 (col.10, lines 46+);

irradiating a laser light 3 onto said semiconductor film to crystallize said semiconductor film (step S1, col.11, lines 31-39), and

controlling an irradiation energy of said laser light based on a refractive index (step S2, col.11, lines 40-64) of said semiconductor film on which said laser light has been irradiated so that the refractive index of said semiconductor film is within a predetermined range (the desired crystallinity).

Imahashi discloses control based on the band-gap spectral reflectance, which inherently encompasses the broadly cited control "based" on the refractive index since the reflectance is based on the refractive index. The refractive index is inherently within a predetermined range because the crystallinity inherently has a predetermined refractive index.

As to claims 5 and 9, Imahashi discloses to repeatedly irradiate (to pulse) the laser light (col.5, lines 28-38). The pulses may have varying densities (col.5, lines 34-38). Note further as to claim 9, that claim 9 does not cite that the first and second lights are different.

As to claims 2, 6, 10, Imahashi discloses that the laser light is KrF or an XeCl laser (col.5, lines 28-29).

As to claims 3, 7, 11, Imahashi discloses to scan the laser light (col.5, lines 16-20).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,336,969. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are more broad in scope.

Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,059,873. Although the

conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are more broad in scope.

Allowable Subject Matter

Claims 13-21 are allowable over the prior art.

Claims 4, 8 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable over the prior art if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

AGK 7/14/03

The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest the method as cited in claim 13. The closest prior art, Imahashi, discloses measuring the spectral reflectance to control irradiation for crystallization. Imahashi compares graphs of spectral reflectance, but does not take the extra step of measuring the refractive index. There is no motivation to measure the refractive index in the method of Imahashi because it would require further process steps.

Response to Amendment

The rejection over Brady is withdrawn. Claims 1-3, 5- 7, 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Imahashi et al (US 5,294,518). Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting. Claims 13-21 are allowable over the prior art. Claims 4, 8 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita K Alanko whose telephone number is 703-305-7708. The examiner can normally be reached on Monday-Wednesday and Friday, 8:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin L Utech can be reached on 703-308-3836. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Anita K. Alanko

Anita K Alanko
Primary Examiner
Art Unit 1765

AKA
July 14, 2003